

FILED
POLK COUNTY OREGON

15 MAY 2015 1:38

COUNTY OF POLK TRIAL COURT ADMINISTRATOR

ENTERED BY

Case No.: 15LT03957

IN THE CIRCUIT COURT OF THE STATE OF OREGON

COUNTY OF POLK

DENTON ARDEL HONBECK,

Plaintiff,

vs.

GREGORY L. WARNOCK,
SHELLEY K. WARNOCK and ALL OTHERS

Defendant.

EVICTON COMPLAINT

ORS 105.123 & ORS 90.427

Plaintiff Denton Ardel Honbeck ("Honbeck") for his Complaint against defendants
Gregory L. Warnock ("GW") alleges as follows:

FIRST CAUSE OF ACTION

1.

Defendants Gregory L. Warnock and Shelley K. Warnock are in possession of the
following premises: 634 Cessna Avenue, Independence, Polk County, Oregon.

2.

Defendants are unlawfully holding the premises by force.

3.

Plaintiff Denton Honbeck holds lawful title in fee simple to the real property located at
634 Cessna Avenue, Independence, Polk County, Oregon.

4.

Plaintiff is entitled to possession of the premises because of the 30 day notice attached as
exhibit A.

SECOND CAUSE OF ACTION

5.

In the alternative Plaintiff hereby incorporates by reference each and every allegation set
forth on paragraphs 1 – 3, inclusive, and realleges them as if they were fully set forth herein.

6.

Plaintiff entered into a contract on July 3rd, 2013 to sell the premises to defendants payable in monthly installments. Plaintiff is to retain title until payments are complete.

7.

Plaintiff is entitled to possession of the premises because of the 30 day notice pursuant to ORS 90.427 attached as exhibit A.

8.


The contract signed by plaintiff and defendants on July 3rd 2013 specifies that the prevailing party shall be awarded reasonable attorney's fee, costs and disbursements. The plaintiff further requests reasonable attorney and costs fees from the defendants pursuant to ORS 90.255 and 105.137.

9.

WHEREFORE, Plaintiff Honbeck prays for judgment against Defendants Gregory and Shelley Warnock as follows:

1. For an order removing the Defendants from the premises
2. For costs of suit incurred herein, including reasonable attorney's fees, disbursements, and court cost and
3. For such other and further relief that the Court may deem just and proper.

Dated: 6 May 2015


Denton Honbeck
Plaintiff

Dale Maximiliano Roller, Attorney at Law

**161 High Street SE
Suite #243
Salem, OR 97301**

**425 SW Madison Avenue
Suite #J-4
Corvallis, Oregon 97330**

**Phone: (503) 347-6662 Fax: (888) 381-1722
lawyer@daleroller.com www.daleroller.com**

March 27, 2015

**Gregory L. Warnock
Shelly K. Warnock
634 Cessna Avenue
Independence, OR 97351**

VIA: USPS First Class mail

Re: ORS 90.396 NOTICE OF TERMINATION OF TENANCY – No Cause stated

Mr. and Mrs. Warnock:

This law office represents Denton Honbeck in the above entitled matter. Notice is hereby given that your tenancy at 634 Cessna Avenue, Independence, Oregon is hereby terminated effective 11:59 p.m. on 30 April 2015 in accordance with ORS 90.427.

If you fail to vacate the premises with all of your property by the above termination date and time my office is prepared to file an action for Forcible Entry and Detainer in Polk County Circuit Court. In the event it is necessary to file a lawsuit in court this law office will be prepared to ask the court to award my client's costs, disbursements and attorney's fees pursuant to ORS 90.255. My current billing rate is \$250 per hour.

If you have any further questions, please feel free to contact my office via email at lawyer@daleroller.com.

Respectfully,


Dale Maximiliano Roller, Esquire OSB #091897

Exhibit A

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF PolkFILED
POLK COUNTY OREGON
15 MAY 14 AM 8:47
CLERK OF COURT ADMINISTRATOR
ENTERED BYDenton A. Honbeck

Plaintiff (Landlord or Agent)

Case No: 15LT03957ANSWER TO A
RESIDENTIAL EVICTION

v.

Gregory L. WarnockShelly K. Warnock

Defendant (Tenant or Occupant)

I deny that the plaintiff-landlord is entitled to possession because:

- ☐ The plaintiff-landlord did not make repairs. List any repair problems: _____
- ☐ The claimed damage or violation has been corrected and correction is allowed by law.
- ☐ The plaintiff-landlord is trying to evict me because of my complaints (or the eviction is otherwise retaliatory).
- ☐ The plaintiff-landlord is trying to evict me because of my status as a victim of domestic violence, sexual assault, or stalking.
- ☒ The eviction notice is legally incorrect. Explain _____
- ☐ List any other defenses: _____

☐ Additional pages attachedI ask that the plaintiff-landlord not be awarded possession of the premises and that I be awarded my costs and fees, lawyer fees (if any, under ORS 90.255), and a prevailing party fee under ORS 20.190.**Certificate of Document Preparation.** Check all that apply:

- ☒ I chose this form for myself and completed it without paid help.
- ☐ A legal help organization helped me choose or complete this form, but I did not pay money to anyone.
- ☐ I paid (or will pay) _____ for help choosing, completing, or reviewing this form.

I certify that the allegations and factual assertions in this answer are true to the best of my knowledge.

[Signature]
Signature of Tenant 1Gregory L. Warnock
Name (printed)5-14-15
Date634 Cessna St.
Address of Tenant 1Independence OR 97351
City/State/ZIP503-428-0365
Phone[Signature]
Signature of Tenant 2Shelly K. Warnock
Name (printed)5-14-15
Date634 Cessna
Address of Tenant 2Independence, OR 97351
City/State/ZIP503-689-7109
Phone

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF POLK
850 Main St Dallas Oregon 97338

FILED
POLK COUNTY OREGON
15 MAY 14 PM 2:52

TRIAL COURT ADMINISTRATOR
ENTERED BY _____

Denton Ardel Honbeck

Plaintiff (Landlord or Agent)

v.

Case No: 15LT03957

RESIDENTIAL EVICTION

GENERAL JUDGMENT

Gregory L Warnock; Shelley K Warnock And All Others

Defendant (Tenant or Occupant)

☐ And Money Award

☒ Order

On 5/14/2015, a hearing was held in an action to recover possession of: 634 Cesna AVE
Independence OR 97351

The following parties appeared:

Denton Ardel Honbeck; Gregory L Warnock; Shelley K Warnock

The court grants judgment as follows:

Set for trial C2, Judge Hill

☐ Judgment of dismissal ☐ with ☐ without prejudice.

☐ Default judgment in favor of plaintiff for possession of premises described above.

☐ Default judgment in favor of defendant dismissing plaintiff's complaint.

☐ Judgment in favor of plaintiff after trial. Plaintiff is awarded possession of the premises described above ☐ Effective Immediately **or** ☐ Effective _____.

☐ Judgment in favor of defendant after trial.

☐ Stipulated judgment:

☐ Stipulated agreement ☐ attached as Exhibit _____ **or** ☐ as follows:

☒ Other: *Defendants acknowledge that are not active military service. Plaintiffs costs and fees are \$115 (74+36).*

And

☐ costs and fees to prevailing party **or** ☒ no costs or fees to either party

☐ prevailing party fee according to ORS 20.190

MONEY AWARD

Judgment Creditor: Denton Ardel Honbeck; Address Unknown


Judgment Creditor's Attorney:

Judgment Debtors:

Name	Address	Year of Birth	SSN (last 4)/TIN	Dr. License # & State	Lawyer Name
Gregory L Warnock	634 Cesna AVE Independence OR 97351				

Shelley K Warnock	634 Cessna AVE Independence OR 97351				
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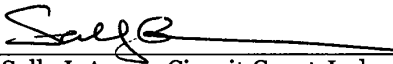
The following person or public body is known to be entitled to a portion of this money award:

1. Money Award	\$	2. Prejudgment Interest	\$
3. Accrued Arrearage	\$	4. Costs & Service Expenses	\$ 
5. Attorney Fees	\$	Prevailing Party Fee (listed at ORS 20.190)	\$
The total amount awarded by this judgment is			

Plus postjudgment interest at the rate set by ORS 82.010(2) (or) on the amounts in sections 1, 2, & 3 at %
by agreement of the parties and the balance as set by ORS 82.010(2)

☐ Prevailing party is granted leave to submit a *Supplemental Judgment* for costs and fees under ORCP 68C.

5/14/2015
Date


Sally L Avera, Circuit Court Judge

IN THE CIRCUIT COURT OF THE STATE OF OREGON
COUNTY OF POLK

DENTON ARDEL HONBECK,

Plaintiff,

vs.

GREGORY L. WARNOCK,
SHELLEY K. WARNOCK and ALL OTHERS

Defendant.

Case No.: 15LT03957

MEMORANDUM OF LAW

FED under land sales contract

In a tenancy that is not covered by ORLTA (ORS 90.110), the FED statutes merely provide a method to recover possession of the rented premises. *See Hislop v. Moldenhauer*, 21 Or 208, 210, 27 P 1052 (1891). The only question is the plaintiff's right to possession. *Grove v. The Hindquarter Corporation*, 45 Or App 781, 786, 609 P2d 840 (1980). Generally, affirmative defenses are not available to the defendant. *Class v. Carter*, 293 Or 147, 154, 645 P2d 536 (1982); *Menefee Lumber Co. v. Abrams*, 138 Or 263, 271, 5 P2d 709 (1932); *Arnold v. Krigbaum*, 169 Cal 143, 145, 146 P 423 (1915).

Title to property cannot be litigated in an FED action except that it may be incidentally involved in establishing the right of possession. 36A CJS *Forcible Entry and Detainer* §6 (1961); *Schroeder v. Woody*, 166 Or 93, 95, 109 P2d 597 (1941). At common law, a tenant cannot dispute the landlord's title because to do so would be to dispute the tenant's interest as well, because the tenant's interest derives from the landlord's. *See* ORS 91.115

The following type of living situation is excluded from ORLTA "unless created to avoid the application" of ORLTA; occupancy under a contract of sale if the occupant is the purchaser or a person who succeeds to the interest of the purchaser. ORS 90.110(2). A tenant who holds but has not exercised an option to purchase the dwelling unit is not a purchaser for purposes of this subsection. Thus, ORLTA applies to occupancy under a lease option agreement before the option is exercised because a lease-option agreement is generally considered to be a residential

1 rental agreement unless and until the option to purchase is exercised. *See Rockwell v. Nelson*, 157
2 Or App 269, 274, 970 P2d 666 (1998), *rev. denied*, 328 Or 365 (1999).

3
4 Repudiation of contract

5 A party repudiates a contract when it clearly manifests an intent not to
6 perform fully before its performance is due. *Mohr v. Lear*, 239 Or 41, 49, 395 P2d
7 117 (1964). A repudiation may be solely by conduct but the conduct must be
8 unambiguous, voluntary, and affirmative. *Swick v. Mueller*, 193 Or 668, 676, 238
9 P2d 717 (1952).

10 On repudiation of the contract, the injured party may elect to terminate the
11 contract and sue for damages for total breach. *Jitner v. Gersch Development Co.*,
12 101 Or App 220, 224, 789 P2d 704 (1990). The injured party must comply with
13 the doctrine of mitigation of damages. *Schafer v. Sunset Packing*, 256 Or 539, 542,
14 474 P2d 529 (1970); *Enco, Inc. v. F.C. Russell Co.*, 210 Or 324, 339–340, 311 P2d
15 737 (1957).

16
17
18 Dated: May 26 2015

/s/Dale Roller

Dale Roller, OSB #091897
Attorney for Defendant
161 High Street SE, #243
Salem, Oregon 97301
phone: (503) 347 – 6662
fax: (888) 381 – 1722
lawyer@daleroller.com

23
24
25 I hereby certify that I caused to be served a certified true copy of the forgoing
26 Memorandum of Law by placing in an envelope with correct postage affixed and deposited with
27 the US Postal Service addressed to Gregory Warnock and Shelly Warnock 634 Cessna Avenue,
28 Independence, Oregon 97351 on May 26, 2015. /s/Dale Roller

FILED
POLK COUNTY OREGON
IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF POLK
850 Main St Dallas Oregon 97338
15 MAY 27 AM 10:13
JUDICIAL COURT ADMINISTRATOR

Denton Ardel Honbeck
Plaintiff (Landlord or Agent)
v.

Case No: 15ET03957

**RESIDENTIAL EVICTION
GENERAL JUDGMENT**

Gregory L Warnock; Shelley K Warnock
Defendant (Tenant or Occupant)

☒ And Money Award
☐ Conditional Judgment

On 5/27/2015, a hearing was held in an action to recover possession of: 634 Cesna AVE
Independence OR 97351

The following parties appeared: Gregory Warnock X Shelley Warnock X and all others
Denton Honbeck with Attorney Dale Roller

The court grants judgment as follows:

- ☐ Judgment of dismissal ☐ with ☐ without prejudice.
- ☐ Default judgment in favor of plaintiff for possession of premises described above.
- ☐ Default judgment in favor of defendant dismissing plaintiff's complaint.
- ☐ Judgment in favor of plaintiff after trial. Plaintiff is awarded possession of the premises described above ☐ Effective Immediately **or** ☐ Effective _____.
- ☒ Judgment in favor of defendant after trial.
- ☐ Stipulated judgment:
- ☐ Stipulated agreement ☐ attached as Exhibit _____ **or** ☐ as follows:
- ☐ Other:

And

- ☒ costs and fees to prevailing party **or** ☐ no costs or fees to either party
- ☐ prevailing party fee according to ORS 20.190

MONEY AWARD

Gregory Warnock, Shelley Warnock
Judgment Creditor: Denton Ardel Honbeck; Address Unknown
Judgment Creditor's Attorney: DALE MAXIMILLIANO ROLLER 100 HIGH STREET SE
#200A
SALEM OR 97301 503-534-3551

Judgment Debtors:

Name	Address	Year of Birth	SSN (last 4)/TIN	Dr. License # & State	Lawyer Name
<u>Gregory L Warnock</u>	<u>634 Cesna AVE</u> <u>Independence OR</u>				

Denton Honbeck

	97351				
Shelley K Warnock	634 Cessna AVE Independence OR 97351				

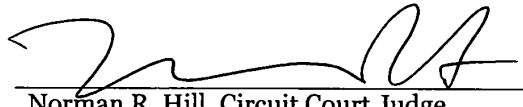
The following person or public body is known to be entitled to a portion of this money award:

1. Money Award	\$	—	2. Prejudgment Interest	\$	—
3. Accrued Arrearage	\$	—	4. Costs & Service Expenses	\$	79
5. Attorney Fees	\$	—	Prevailing Party Fee (listed at ORS 20.190)	\$	
The total amount awarded by this judgment is					\$0.00 79.00

Plus postjudgment interest at the rate set by ORS 82.010(2) (or) on the amounts in sections 1, 2, & 3 at %
by agreement of the parties and the balance as set by ORS 82.010(2)

☒ Prevailing party is granted leave to submit a *Supplemental Judgment* for costs and fees under ORCP 68C.

5/27/2015
Date


Norman R. Hill, Circuit Court Judge